

**LIST OF KEY STATUTES, REGULATIONS AND POLICIES
POTENTIALLY APPLICABLE UNDER NRDA RESTORATION PLANS**

Anadromous Fish Conservation Act (AFCA), 16 USC 757a et seq.

The AFCA authorizes the Secretaries of Commerce and/or Interior to enter into cooperative agreements with the states for the conservation, development, and enhancement of the Nation's anadromous fishery resources. Pursuant to such agreements, the federal government may undertake studies and activities to restore, enhance, or manage anadromous fish, fish habitat, and passages. The Act authorizes federal grants to the states or other non-Federal entities to improve spawning areas, install fishways, construction fish protection devices and hatcheries, conduct research to improve management, and otherwise increase anadromous fish resources. The Trustees may be able to take advantage of the provisions and funding of AFCA in order to leverage anadromous fish restoration plans and projects.

Clean Water Act (CWA) (Federal Water Pollution Control Act), 33 U.S.C. 1251, et seq.

The CWA is the principal law governing pollution control and water quality of the nation's waterways. Section 404 of the law authorizes a permit program for the disposal of dredged or fill material into navigable waters. The Army Corps of Engineers (Corps) administers the program. In general, restoration projects which move significant amounts of material into or out of waters or wetlands -- for example, hydrologic restoration of marshes -- require 404 permits.

Under section 401 of the CWA, restoration projects that involve discharge or fill to wetlands or navigable waters must obtain certification of compliance with state water quality standards. The State implements the 401 certification program. Generally, restoration projects with minor wetlands impacts (*i.e.*, a project covered by a Corps general permit) are not required to obtain 401 certification, while projects with potentially large or cumulative impacts to critical areas require certification.

Coastal Zone Management Act (CZMA), 16 U.S.C. 1451, et seq. 15 CFR Part 923

The goal of the CZMA is to preserve, protect, develop and, where possible, restore and enhance the nation's coastal resources. The federal government provides matching grants to states with federally-approved coastal management programs for the realization of these goals through the development and implementation of state coastal zone management programs. Most states have a federally-approved program. Section 1456 of the CZMA requires that any federal action inside or outside of the coastal zone that affects any land or water use or natural resources of the coastal zone shall be consistent, to the maximum extent practicable, with the enforceable policies of approved State management programs. It states that no federal license or permit may be granted without giving the State the opportunity to concur that the project is consistent with the State's coastal policies. The regulations outline the consistency procedures. Other provisions of CZMA provide for the development of special area management plans (SAMPs) for areas of the coastal zone of particular importance (16 USC 1456b(6)). In addition, Section 6217 of P.L. 101-508, codified at 16 USC 1455b, requires states with federally-approved CZM programs to develop programs for the control of coastal non-point pollution control.

In order to comply with the CZMA, the Trustees intend to seek the concurrence of the State that

their preferred projects are consistent to the maximum extent practicable with the enforceable policies of the state coastal program.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601, *et seq.*

CERCLA provides the basic legal framework for clean up and restoration of the nation's hazardous substances sites, addressing liability, compensation, cleanup, emergency response, and natural resource restoration. Under CERCLA, natural resource trustees assess damages to natural resources resulting from a discharge of oil or hazardous substances and seek to recover such damages. Compensation so received must be used to restore, replace, rehabilitate, or acquire the equivalent of lost natural resources and services.

Generally, parties responsible for contamination of sites and the current owners or operators of contaminated sites are liable for the cost of clean up and restoration. CERCLA also created a revolving fund for use at "orphan" sites or before settlement. CERCLA establishes a hazard ranking system for assessing the nation's contaminated sites with the most contaminated sites being placed on the National Priorities List (NPL).

To the extent that restoration projects are proposed for areas containing hazardous substances, the Trustees will avoid exacerbating any potential risk posed by such substances and will undertake no actions which might constitute "arrangement for disposal of hazardous substances." At this time, the Trustees are not aware of any other potential hazardous substance problem associated with the areas where proposed restoration projects will occur.

Endangered Species Act (ESA), 16 U.S.C. 1531, *et seq.*

The ESA establishes a policy that all Federal departments and agencies seek to conserve endangered and threatened species and their habitats, and encourages such agencies to utilize their authorities to further these purposes. Under the Act, the Department of Commerce through NOAA and the Department of the Interior through the USFWS publish lists of endangered and threatened species. Section 7 of the Act requires that federal agencies and departments consult with these departments to minimize the effects of federal actions on endangered and threatened species. Prior to implementation of any project that may potentially affect an endangered or threatened species project, the Trustees would conduct Section 7 consultations.

Executive Order 11988 -- Construction in Floodplains

This 1977 Executive Order directs federal agencies to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of development in floodplains wherever there is a practicable alternative. Each agency is responsible for evaluating the potential effects of any action it may take in a floodplain.

Before taking an action, the federal agency must determine whether the proposed action will occur in a floodplain. For major federal actions significantly affecting the quality of the human environment, the evaluation will be included in the agency's NEPA compliance document(s). The agency must consider alternatives to avoid adverse effects and incompatible development in

floodplains. If the only practicable alternative requires siting in a floodplain, the agency must: (1) design or modify the action to minimize potential harm; and (2) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

Executive Order 12898 - Environmental Justice

On February 11, 1994, President Clinton issued Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. This Executive Order requires each federal agency to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low income populations. EPA and the Council on Environmental Quality (CEQ) have emphasized the importance of incorporating environmental justice review in the analyses conducted by federal agencies under NEPA and of developing mitigation measures that avoid disproportionate environmental effects on minority and low-income populations.

Affected Communities The Trustees will identify whether there are any distinct, separate communities which may be potentially affected by any action under a NRDA Restoration Plan. There may be some Native American communities which rely on Treaty-reserved fish and shellfish resources for subsistence, economic and spiritual purposes; other members of low-income communities may also rely on fishery resources for subsistence purposes. The Trustees will determine whether there are any disproportionate, adverse impacts on human health or environmental effects on implementation of any preferred alternative under a NRDA Restoration Plan on members of a tribal or other minority or low income population. The Trustees will ensure that there are no low income or ethnic minority communities that would be adversely affected by the proposed restoration activities.

Fish and Wildlife Coordination Act (FWCA), 16 U.S.C. 661, et seq.

The FWCA requires that federal agencies consult with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service and State wildlife agencies for activities that affect, control or modify waters of any stream or bodies of water, in order to minimize the adverse impacts of such actions on fish and wildlife resources and habitat. This consultation is generally incorporated into the process of complying with Section 404 of the Clean Water Act, NEPA or other federal permit, license or review requirements.

National Environmental Policy Act (NEPA), 42 USC 4321-4370d; 40 CFR Parts 1500-1508.

NEPA is the basic national charter for the protection of the environment. Its purpose is to "encourage productive and enjoyable harmony between man and the environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understand of the ecological systems and and natural resources important to the Nation." The law requires the government to consider the consequences of major federal actions on human and natural aspects of the environment in order to minimize, where possible, adverse impacts. Equally important, NEPA established a process of environmental review and public notification for federal planning and decisionmaking.

Generally, when it is uncertain whether an action will have a significant effect, federal agencies

will begin the NEPA planning process by preparing an Environmental Assessment (EA). The EA may undergo a public review and comment period. Federal agencies may then review the comments and make a determination. Depending on whether an impact is considered significant, an environmental impact statement (EIS) or a finding of no significance (FONSI) will be issued.

The Trustees have integrated OPA restoration planning with the NEPA process to comply, in part, with those requirements. This integrated process allows the Trustees to meet the public involvement requirements of OPA and NEPA concurrently. Restoration Plans and EAs or EISs are intended to accomplish partial NEPA compliance by summarizing the current environmental setting; describing the purpose and need for restoration action; identifying alternative actions; assessing the preferred actions' environmental consequences; and summarizing opportunities for public participation in the decision process. Project-specific NEPA documents will need to be prepared for those proposed restoration projects not already analyzed in an environment assessment or environmental impact statement.

Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701, *et seq.*; 15 CFR Part 990

OPA establishes a liability regime for oil spills which injure or are likely to injure natural resources and/or the services that those resources provide to the ecosystem or humans. Federal and state agencies and Indian tribes act as trustees on behalf of the public to assess the injuries, scale restoration to compensate for those injuries and implement restoration. Section 1006(e)(1) of OPA (33 U.S.C. § 2706 (e)(1)) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, (NOAA) to promulgate regulations for the assessment of natural resource damages resulting from a discharge or substantial threat of a discharge of oil. Assessments are not intended to replace response actions, which have as their primary purpose the protection of human health, but to supplement them by providing a process for restoring, replacing, rehabilitating, and acquiring the equivalent of natural resources and services injured as a result of an incident involving oil. This rule provides a framework for conducting sound natural resource damage assessments that achieve restoration. The process emphasizes both public involvement and participation by the responsible party(ies).

Park System Resource Protection Act, 16 U.S.C. 19jj

Public Law 101-337, Park System Resource Protection Act (16 U.S.C. 19jj), requires the Secretary of the Interior to assess and monitor injuries to park system resources. The Act specifically allows the Secretary of the Interior to recover response costs and damages from the responsible party causing the destruction, loss of or injury to park system resources. This Act provides that any monies recovered by the NPS may be used to reimburse the costs of response and damage assessment and to restore, replace or acquire the equivalent of the injured resources.

Rivers and Harbors Act, 33 U.S.C. 401, *et seq.*

The Rivers and Harbors Act regulates development and use of the nation's navigable waterways. Section 10 of the Act prohibits unauthorized obstruction or alteration of navigable waters and vests the Corps with authority to regulate discharges of fill and other materials into such waters. Restoration actions that require Section 404 Clean Water Act permits are likely also to require permits under Section 10 of the Rivers and Harbors Act. However, a single permit usually serves for both. Therefore, the Trustees can ensure compliance with the Rivers and Harbors Act through

the same mechanisms.

OTHER POTENTIALLY APPLICABLE LAWS AND REGULATIONS

This section lists other laws that potentially affect NRDA restoration activities. The statutes or their implementing regulations may require permits from federal or state permitting authorities.

Federal

Archaeological Resources Protection Act, 16 U.S.C. 470, *et seq.*
Clean Air Act, 42 U.S.C. 7401, *et seq.*
Emergency Wetlands Resources Act, 16 USC 3901.
Estuarine Protection Act, 16 USC 1221 *et seq.*
Federal Water Pollution Control Act, 33 USC 1321 *et seq.*
Fish and Wildlife Coordination Act, 16 USC 661 *et seq.*
Marine Mammal Protection Act, 16 USC 1361 *et seq.*
Marine Protection, Research, and Sanctuaries Act, 33 USC 1401 *et seq.*
Migratory Bird Treaty Act, 16 USC 703 *et seq.*
National Historic Preservation Act, 12 USC 470 *et seq.*
National Park Act of August 19, 1916 (Organic Act), 16 U.S.C. 1, *et seq.*

**LIST OF APPLICABLE LAWS AND REGULATIONS
POTENTIALLY APPLICABLE UNDER NRDA RESTORATION PLANS**

Law/Regulation	Scope	Responsible Agency	Compliance	Permit?
FEDERAL				
Anadromous Fish Conservation Act, 16 USC 757	Conservation and restoration of anadromous fish resources and habitat	NMFS, USFWS, State	Project-specific coordination with responsible parties	No
Clean Air Act (CAA), 42 USC 7401 et seq.	Prevention of degradation of air quality.	EPA, Ecology	Project-specific	No
Clean Water Act (CWA), 33 USC 1251 et seq.; Section 404 & 301	Regulating discharge of dredge and fill material in waters of the US; protection of wetlands.	Corps, EPA	Project-specific	Yes
Clean Water Act, Sections 401 & 402	Compliance with state water quality standards; discharges to waters of the Puyallup Tribe	Puyallup Tribe, State	Project-specific	Yes
Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601	Provides authorization and program framework for Superfund site remediation and restoration; requires plan development and public involvement.	NOAA, DOI, DOJ, State Ecology	NEPA process to guide plan development and public involvement; consultation with DOJ and federal courts and needed.	No
Coastal Zone Management Act (CZMA), 16 USC 1451 et seq.	Compliance with CZMA for protection of coastal zone; certification by state required.	NOAA, State Ecology	Project-specific; review at state level.	Cert.
Endangered Species Act (ESA), 16 USC 1531 et seq.	Continued existence of listed threatened and endangered species.	USFWS, NMFS	Partial compliance with RP/EIS. Project-specific consultation with USFWS also required.	No
Fish and Wildlife Coordination Act, 16 USC 661.	Protection of fish and wildlife. Applies to federal actions only.	USFWS, NMFS	Project-specific coordination with USFWS and NMFS.	No

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Law/Regulation	Scope	Responsible Agency	Compliance	Permit?
FEDERAL				
National Environmental Policy Act of 1969 (NEPA). 42 USC 4321-4370d; 40 CFR 1500-1508.	Disclosure of environmental impacts of proposed project; evaluation of alternatives. Applies to federal actions.	Federal lead agency; EPA	Partial compliance through RP/EIS process. Additional project-specific NEPA compliance as appropriate.	No
National Historic Preservation Act (NHPA), 12 USC 470 et seq.	Preservation/protection of historic and pre-historic resources.	State, Tribes	Project-specific; review at state level.	No
Rivers and Harbors Act of 1899, 33 USC 403 et seq., Section 10	Prohibits obstruction or alterations of navigable waters. Regulates construction of any structures within navigable waters of the US	Corps	Project-specific	Yes
LOCAL				
Law/Regulation	Scope	Responsible Agency	Compliance	Permit?
Zoning Ordinances	Restricts types of development within designated zones.	Local government	Project-specific	No
Clearing and Grading Ordinances	Regulates clearing and grading activities	Local government	Project-specific	Yes
Noise/Nuisance Ordinances	Restricts noise and nuisance levels	Local government	Project-specific	No

STATE OF WASHINGTON

Additional Federal/Tribal/State/Local Authorities:

Treaty of Medicine Creek of 1854, 10 Stat. 1132
Treaty of Point Elliott, 12 Stat. 927
Indian Reorganization Act of June 18, 1934
Puyallup Land Claims Settlement Act, 25 USC 1773 et seq.

Growth Management Act (GMA)
Hydraulic Code, Ch. 75.20 RCW
Model Toxics Control Act (MTCA), Ch. 70.105D RCW
Public Trust Doctrine
State Aquatic Lands Management Laws, Ch. 79.90-92 RCW
Shoreline Management Act
State Implementation Plan for Clean Air standards
State Environmental Policy Act, Ch. 43 RCW

Tribal. Tribal government air, land and water quality laws.

Counties. Zoning ordinances, comprehensive plans, shoreline plans, growth management plans, construction grading or fill permits, noise, wetlands permits, sensitive areas ordinances.

Cities: Zoning ordinances, comprehensive plans, shoreline plans, growth management plans, construction grading or fill permits, noise, wetlands permits, sensitive areas ordinances Shoreline and Lane Use Standards.

Model Toxics Control Act (MTCA), Ch.70.105D RCW (1989) and Ch.173-340 WAC (1992)

MTCA, Washington's toxic cleanup law, mandates that site cleanups protect the state's citizens and the environment. The regulations established cleanup standards, which provide a uniform, statewide approach to cleanup that can be applied on a site-by-site basis; and requirements for cleanup actions, which involve evaluating the best methodology to achieve the cleanup standards at a site. The cleanup actions must also provide permanent cleanup solutions, a reasonable timeframe for cleanup, and monitoring. MTCA is the state equivalent of the federal Superfund program. More detailed information on MTCA is available from Ecology.

Washington State Constitution, Articles XV, XVII, and XXVII; State Aquatic Lands Management Act, Ch. 79.90-96, 79.68 RCW and Ch. 332.30 WAC.

The Department of Natural Resources manages over two million acres of State-owned aquatic lands and will be a key player when planning restoration. This is particularly true in urban estuaries with State-established harbor lines, port management areas, and leased areas and tidelands within and outside the Port area in Commencement Bay. As the steward and trustee for these public lands, DNR's role is complex, and is governed to a large degree by the State Constitution and other statutory requirements. While encouraging public use, other uses related to commerce and navigation also play a central role in balancing their overall public trust mandate. More information may be found in the DNR publication entitled "Aquatic Lands, Strategic Plan, 1992."

State Environmental Policy Act (SEPA), Ch. 43 RCW

Adopted in 1971, and revised several times, including as recently as 1995, SEPA requires state agencies and local governments to analyze proposed projects and plans for potentially significant impacts to the environment. Regulations implementing SEPA and providing guidance for state and local governments have

been adopted (Ch. 197-11 WAC). Specific resource areas which must be considered under SEPA include earth, air, water, vegetation, wildlife, public health, and shorelines. The SEPA review process may be initiated at the local government level through the development application review procedures. Local regulations identifying and protecting critical or sensitive environmental areas help ensure compliance with SEPA requirements. State agencies also prepare documents in response to proposals for state agency action. An EIS is required under SEPA for any proposal for major actions having a probable, adverse environmental impact, except for actions which are categorically exempt.

STATE OF WASHINGTON

Law/Regulation	Scope	Responsible Agency	Compliance	Permit?
State Environmental Policy Act (SEPA), Ch. 43 RCW	Disclosure of environmental impacts of proposed project; evaluation of alternatives.	Lead state/local agency, Ecology	Partial compliance if RP/EIS is adopted by the state. Project-specific SEPA documentation also required. Local review.	No
Aquatic Lands, Ch. 79.90 RCW	Navigation and commerce; management of wildlife habitat, natural area preserves.	WDNR	Project-specific use authorization required	No
Shoreline Management Act	Protection of shoreline/coastal areas and resources. Meets federal requirements under CZMA	Ecology	Project-specific	Yes
Growth Management Act	Controls urban development. Protection of sensitive resources.	Local and county government, Ecology	Project-specific. Local jurisdiction review.	No
Forest Protective Act	Management of timber adjacent to state waters	WDNR	Project-specific	Yes
Hydraulic Project Approval, Ch. 75.20 RCW	Protection of aquatic life, beds, and flow of state waters.	WDFW	Project-specific	Yes
Washington Water Pollution Control Act	Governs discharges to state waters	Ecology	Project-specific	Yes
Growth Management Act	Construction work in wetlands	County, Cities Local jurisdiction		Yes

STATE OF MASSACHUSETTS**Additional Federal/Tribal/State/Local Authorities:**

Massachusetts Endangered Species Act (MESA), MGL Ch. 131A
 Massachusetts Environmental Policy Act (MEPA), MGL Ch. 30 sec. 61 et seq.
 Public Waterfront Act ("Chapter 91"), MGL Ch. 91
 Rivers Protection Act, St. 1996, C. 258
 Wetlands Protection Act, MGL Ch. 131 sec. 40.
 Massachusetts 401 Water Quality Certification Program, 314 CMR 9.00.

Law/Regulation	Scope	Responsible Agency	Compliance	Permit?
Mass. Endangered Species Act, MGL Ch. 131A	Continued existence of State-listed species	NHESP	Partial compliance with RP/EIS. Project-specific consultation with NHESP as appropriate.	No
Mass. Environmental Policy Act (MEPA), MGL Ch. 30	Disclosure of environmental impacts of proposed project; evaluation of alternatives; public notification and review	Lead state/local agency, EOE- MEPA office	Partial compliance if RP/EIS is adopted by state. Project-specific MEPA documentation as appropriate.	No
Public Waterfront Act, Ch. 91	Public rights to and protection of shorelines and some rivers and streams	Local Conservation Commissions; MDEP	Project-specific through consultation and permit as appropriate	Yes
Rivers Protection Act	Protection of rivers and streams and adjacent lands	Local Conservation Commissions; MDEP	Project-specific through consultation and permit as appropriate	Yes
Wetlands Protection Act, MGL 131	Protection of wetlands and adjacent lands	Local Conservation Commissions; MDEP	Project-specific through consultation and permit as appropriate	Yes
Mass. 401 Water Quality Certification Program	Protection of water quality	MDEP	Project-specific through consultation and permit as appropriate	Yes

STATE OF HAWAII

Additional Federal/Tribal/State/Local Authorities:

USS *Arizona* Memorial Enabling Legislation (PL 87-201)

Hawaii Environmental Response Law, Title 10, Chapter 120D, Hawaii Revised Statutes

The Hawaiian response law addresses the release or threatened release of any hazardous substance, including oil, into the environment. It creates an environmental response fund which can be used to pay for, among other things, costs of removal actions and costs incurred to restore, rehabilitate, replace or acquire the equivalent of any natural resources injured, destroyed or lost as the result of a release of a hazardous substance. The statute further provides that there shall be no double recovery for natural resource damages. The statute states that upon the request of the Department of Health, the attorney general will recover such costs from the responsible parties. The State of Hawaii Department of Health has promulgated regulations to address the cleanup of releases of hazardous substances. The federal and state Trustees have participated in cooperative injury assessment and restoration planning activities so as to avoid the possibility of any double recovery.

Hawaii Conservation of Aquatic Life, Wildlife, and Land Plants, Title 12, Chapter 195D

Recognizing that many species of flora and fauna unique to Hawaii have become extinct or are threatened with extinction, the state established procedures to classify species as endangered or threatened. The statute directs the Department of Land and Natural Resources to determine what conservation measures are necessary to ensure the continued ability of species to sustain themselves. The Trustees will work with the appropriate state officials concerning the potential disturbance of endangered species related to the mangrove removal project. See discussion above.

Defensive Sea Area 33 U.S.C. § 475; Executive Order 8143

Executive Order 8143 of May 26, 1939, established the "defensive sea area" which encompasses Pearl Harbor itself and the area immediately outside the entrance channel to the harbor. The Executive Order prohibits any person, other than persons on public vessels of the United States, or any vessels other than public vessels of the United States from entering or navigating within the defensive sea area without authorization of the Secretary of the Navy. Entry control over Pearl Harbor has been delegated to the Commander, Naval Base Pearl Harbor. Title 33 of the United States Code, section 475 directs the Secretary of the Navy to adopt rules and regulations governing the navigation, movement and anchorage of vessels in the waters of Pearl Harbor and the entrance channel to the harbor.

Lists excerpted from the following:

Commencement Bay Natural Resource Trustees. 1997. Commencement Bay Natural Resource Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement. [Available from NOAA DARC/NW, 7600 Sand Point Way NE, Seattle, WA 98115; Restoration Plan can be downloaded at www.darcnw.noaa.gov.]

New Bedford Harbor Trustee Council. 1998. New Bedford Harbor Trustee Council Natural Resource Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement. [Available from Jack Terrill, Coordinator, One Blackburn Drive, Gloucester, MA 01930-2298.]

Chevron Pipeline Oil Spill Trustees. OPA Restoration Plan and Environmental Assessment. Public Draft anticipated for release in next couple of months.